

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 08 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MAXIMINO RODRIGUEZ-MONTAR,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-76315

Agency No. A79-812-074

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 18, 2008^{**}

Before: REINHARDT, LEAVY, and W. FLETCHER, Circuit Judges.

Maximino Rodriguez-Montar, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's ("IJ") decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence and will uphold the agency's decision unless the evidence compels a contrary conclusion. *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992). We dismiss in part and deny in part the petition for review.

We dismiss Rodriguez-Montar's asylum claim because he failed to raise any legal or constitutional challenge to the IJ's finding that his asylum application was barred as untimely. *See* 8 U.S.C. § 1158(a)(3); *Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007) (*per curiam*).

Rodriguez-Montar waived any challenge he may have had to the IJ's finding that he could safely relocate within Mexico. *See id.* Because this issue is dispositive, his withholding of removal claim fails. *See Kaiser v. Ashcroft*, 390 F.3d 653, 659 (9th Cir. 2004) ("An applicant is ineligible for asylum if the evidence establishes that the applicant could avoid persecution by relocating to another part of the applicant's country of nationality. . .") (internal quotations omitted).

Substantial evidence supports the agency's denial of CAT relief because Rodriguez-Montar failed to show that it is more likely than not that he would be

tortured if returned to Mexico. *See Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.